
(2008) 04 OHC CK 0040
In the Orissa High Court

Ram Nag

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 4, 6

Citation : (2008) 106 CLT 64 : (2008) 1 OLR 943 Supp

Hon'ble Judges : S.C. Parija, J;I.M. Quddusi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Parija, J.—The present Petitioner, Ram Nag along with others, had earlier filed a Writ Petition i.e. W.P.(C) No. 13048 of 2006 with the following prayer:

In the circumstances stated above, it is therefore most humbly prayed that your Lordships may be graciously pleased to declare the land acquisition proceeding as null and void without the force of law and be pleased to quash the notification under Annexure-3 series due to violation of the provisions of said Act and to initiate fresh proceedings as per law;

And

Further be pleased to direct the State authorities (Opp.Parties 1 to 6) not to take any drastic and whimsical steps to deprive the Tribal Petitioners (representing four villages) from their property forcibly by using police force without following the due procedure of law i.e. the payment of proper compensation, proper re-settlement and re-habilitation according to policy decision of State Govt. under Annexure-4 series as all the Petitioners and others have a full support to the "Rukuda Dam Project" for the entire benefit of the agricultural land etc.

And

May also be pleased to direct the Opposite Parties 2 to 6 not to impose any false charges against the innocent tribals and to deten the said tribals in the Jail

custody who are only trying to protect the self property as of Constitutional and fundamental rights;

2. The main allegation of the Petitioners in that Writ Petition i.e. W.P.(C) No. 13048 of 2006 was that the notice u/s 4(1) of the Land Acquisition Act has been issued in the year 2002 i.e. 12th June, 2002 and the publication u/s 6(1) of the said act having been issued in the year 2003 i.e. 20.8.2003, which is after the expiry of one year from the date of issuance of notification u/s 4(1) of the said Act, the same is in complete contravention of the provision contained in Section 6(1)(ii) of the Land acquisition Act and further no compensation having been paid within two years from the date of such publication, the entire land acquisition proceeding is null and void as provided u/s 11A of the said Act.

3. This Court by order dated 15.2.2007 dismissed the said Writ Petition i.e. W.P.(C) No. 13048 of 2006, which reads as follows:

Heard Learned Counsel for the parties.

This Writ Petition is filed in the garb of a Public Interest Litigation challenging the land acquisition proceeding. We are of the view that if the land is acquired, the persons whose lands are acquired, are entitled to a compensation under the law. Therefore, this Writ Petition stating to be a Public Interest Litigation at the instance of the persons other than those, who have been effected by such acquisition is misconceived one and the same cannot be entertained. We therefore, dismiss this Writ Petition. We, however, make it clear that we have not examined the merits or otherwise of the validity of such land acquisition proceeding.

In view of this order, Misc. Case No. 11532 of 2006 is also dismissed.

4. Now the present Writ Petition has been filed with identical allegation regarding non-compliance of statutory provision of Land Acquisition Act and with identical prayers as had been made earlier in W.P.(C) No. 13048 of 2006 which is quoted below:

In the circumstances stated above, it is therefore most humbly prayed that your Lordships may be graciously pleased to declare that the land acquisition proceeding as null and void and without the force of law and be pleased to quash the notification under Annexure-2 series due to violation of the provisions of said act and to direct to initiate fresh proceedings as per law if so advised.

And

Further be pleased to direct the State authorities (Opp.Parties) not to take any drastic and whimsical steps to deprive the Tribal Petitioner and other villagers of the aforesaid four villages from their property forcibly by using Police force without following the due procedure of law i.e. the payment of proper compensation, proper re-settlement and re-habilitation according to policy decision of State Govt. the year 2006-

And

May also be pleased to direct the Opposite Parties 2 to 6 not to impose any false charges against the innocent tribals and to detain the said tribals in the Jail custody who are only trying to protect their self property as of Constitutional and fundamental rights;

5. In view of the earlier order of this Court dated 15.2.2007 dismissing the Writ Petition filed by the present Petitioner along with 26 others in W.P.(C) No. 13048 of 2006, the present Writ Petition with the selfsame contentions and prayer is not maintainable and is barred by principle of res judicata. The rule of res judicata applies if the matter directly and substantially in issue in a suit or a proceeding was directly and substantially in issue in the previous suit between the same parties and had been heard and finally decided by a competent Court. A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties, irrespective of the fact whether the matter in issue may be an issue of fact, and "issue of law or one of mixed question of law and fact. An issue of fact or an issue of mixed law and fact decided by a competent Court is finally determined between the parties and cannot be reopened between them in another proceeding.

6. In case of Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy, , the Supreme Court held as follows:

xx xx xx When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same, parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision; the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding xx xx xx.

7. In view of the aforesaid reasons, we are not inclined to interfere in this Writ Petition, which is barred by principle of res judicata. The Writ Petition is accordingly dismissed.

I.M. Quddusi, J.

8. I agree.